IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6684 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

K.P.PATEL

Appearance:

1. Special Civil Application No. 6684 of 1993

MR HS MUNSHAW for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2003

ORAL JUDGEMENT

1. Heard learned advocate Mr.H.S.Munshaw on behalf of the petitioner.

2. Though, notice of rule served on the respondent workman, none appears for respondent, nor any appearance seems to have filed for respondent workman as per the endorsement of the Computer Board of this Court. Therefore, this matter being very old matter of the year 1993, is taken up for final hearing even in the absence of the respondent workman.

The petitioner Corporation has challenged the award passed by the labour court, Godhara in Reference No.47 / 90 [Old No.284 / 85] dated 16th October, 1992, wherein the labour Court has set aside the dismissal order and granted reinstatement with continuity of service and full backwages from the date of Reference i.e. 29th May, 1985.

Initially, this Court [Coram : Justice A.P. Ravani & C.V.Jani, JJ.] has issued Rule and passed the following interim order on date 7th July, 1993.

"Rule.

By way of interim relief the direction with regard stayed on condition that 50 % of the amount of backwages payable to the workman pursuant to the direction given by the labour court is paid to him latest by August 31, 1993, and on further condition that the workman is reinstated in service immediately. It is clarified that the workman would be entitled to claim full wages from 7th day of the publication of the award in the official gazette irrespective of the fact that whether he is actually reinstated or not. It is further directed that the full amount of wages shall be paid to the workman by the Corporation from the aforesaid date latest by August 31, 1993. If the aforesaid conditions are fulfilled, the petitioner Corporation will be at liberty to withhold the balance of the amount of backwages payable to the workman. In case the amount is not paid to the workman by August 31, 1993 it shall carry interest at the rate of 15 % from the date of this order til the amount is paid. In that event of non payment of the amount by August 31, 1993, the ad-interim relief granted herein shall automatically stand vacated and the award shall become enforceable as if no ad-interim relief has been granted by this Court.

July 7, 1993 [A.P.Ravani, J.] [C.V.Jani, J.]"

3. It is pertinent to note that it may be presumed that the respondent workman must have been reinstated in service on or before 31.8.1993 pursuant to the interim order passed by this Court and might have received salary from the date of award till the date of actual reinstatement and 50 % backwages of the interim period. It may also be noted that this Court has not granted stay against the remaining 50 % of backwages.

4. Learned advocate Mr.H.S.Munshaw for the petitioner Corporation has submitted that the respondent workman was dismissed from service on 2nd Dec ember, 1972 and the workman raised the industrial dispute on 29th May, 1985, obviously, after period of 12 to 13 years and the dispute was referred for adjudication and therefore, there was delay in raising the dispute and a contention to that effect was also raised by the petitioner corporation before the labour court but as such, the labour court has not properly answered the said contention and ultimately, the labour court has entertained the Reference on merits. He also submitted that because of delayed Reference for more than 12 - 13 years, the petitioner Corporation was not having any documents in possession and even otherwise, as per the Rules of the Corporation, after five years, such documents / records are not being maintained instantly with the Corporation and therefore, the Corporation was not able to produce necessary documents before the labour court and in absence of that documents, the labour court granted reinstatement with full backwages from the date of reference and therefore also, the labour court has committed gross error in granting the relief in favour of the respondent workman which requires to be interfered with by this Court.

5. I have considered submissions made by the learned advocate Mr.Munshaw on behalf of the petitioner Corporation and also perused the award in question passed by the labour court. It is an admitted fact that the dispute was raised after 12 to 13 years. Though there is no limitation prescribed under Section 2-A read with Section-10[1] of the I.D.Act for raising the industrial dispute within specific time limit but it does not mean that the dispute can be raised at any time. If the dispute is raised belatedly or there was delay, which ultimately, caused inconvenience or damage to the defence of other side, then such delay must have to be considered to be fatal. Looking to the facts of the present case, on account of non production of the documents relating to

the departmental inquiry, the labour court was not able to believe the say of the corporation and granted relief in favour of the respondent workman. It has come on record that there was no charge against the workman about dishonesty and misappropriation but ultimately the labour court has come to the conclusion that looking to the evidence of the workman that at the most it can be considered to be a negligence on the part of the workman. Therefore, the labour court has denied backwages of prior period before the date of Reference being punishment. Apart from this legal aspect, whether reference was delayed and whether such delay was fatal or not and in absence of the documents, the labour court has rightly passed the award or not, and because of the fact that by virtue of the interim order itself, this Court directed the corporation for reinstating the workman and 50 % backwages is already paid to the respondent workman, all these aspects require consideration. Therefore, considering the entire matter without going into all such legal aspects, according to my opinion, if the interim order passed by the Division Bench of this Court is ordered to be treated as the final order in this matter, will meet the ends of justice.

6. Moreover, once the workman has been reinstated in the year 1993 and given 50 % backwages upto to the year 1993 and considering the fact that the learned advocate Mr.Munshaw is not aware of the current status of the workman whether he is in service or not, so also, considering the other legal aspects of the matter that there was delay of 12-13 years and resultantly, the corporation was at loss and suffered prejudice in a manner that they could not produce the relevant material before the labour court to justify their stand and the punishment awarded on the respondent workman, in my opinion, the interim order passed by the Division Bench of this Court requires to be treated as the final order in this matter and the remaining 50 % amount of backwages require to be quashed and set aside.

7. In view of above discussion, present petition is partly allowed. The directions issued by the labour court, Baroda in Reference No.47 / 1990 [Old No.284 / 85] dated 16th October, 1992 granting full backwages from 29th May, 1985 till the date of award is quashed and set aside and it is concluded that the respondent workman is entitled to 50 % backwages only for the aforesaid period. Therefore, now the corporation is not required to pay the remaining 50 % backwages to the respondent workman. However, it is made clear that this Court is not inclined to disturb reinstatement granted to the respondent

workman with continuity of service and 50 % backwages of the period from 29th May, 1985 till the date of award, is confirmed accordingly.

8. Rule is made absolute to the aforesaid extent accordingly with no order as to costs.

Date : 7.8.2003 [H.K.Rathod, J.]

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